imposible to believe that, when by the next morning he had had a chance to think over his position and had been told, he said, by his servant that the girl was a prostitute (an imputation which the Judge found to be quite untrue), he should have held to his course of sending her to his doctor for examination unless he had a guilty conscience in the matter and wished to find out if she really was pregnant. Having dealt with the facts and the credibility of the respective witnesses in this way, the Judge held that the appellant's conduct on this occasion provided the necessary corroboration of Miss Tan's story. Their Lordships can only say that in their opinion his judgment is unexceptionable and it calls for no further comment.

The Court of Appeal took substantially the same view as the trial Judge. It is said however that when they came to deal with the issue of corroboration they adopted a criterion which was unsound in law and so misdirected themselves to the prejudice of the appellant. There is this much to be said for the argument that there is perhaps one passage in the judgment of the learned Chief Justice which is liable to the construction that a piece of independent evidence which is equally consistent with the story told by a witness who has to be corroborated and the contrary story told by a person accused or otherwise on the defence is capable of constituting corroborative evidence. If that was the meaning of the passage in question their Lordships would not think it a correct proposition of law, although even so its deficiency would not provide a reason for reversing the trial Judge's finding and order against the appellant. Their Lordships have no doubt that evidence, to be corroborative, must be truly probative of the relevant issue; that is, it must positively implicate the accused person and positively show or tend to show the truth of the accomplice's story that the accused committed the offence. A fact which is indifferently consistent with the accomplice's story and the accused's denial of it is neutral and supplies no corroboration.

The view expressed by the Chief Justice, who gave the main judgment, was that the crucial question regarding the incident of the 12th August, was, what was the appellant's state of mind? He thought that the facts showed that the appellant was more interested in the question whether Miss Tan was pregnant than in anything else. If his real anxiety was directed to this point then, in the learned Judge's view, that was ample corroboration of Miss Tan's allegations. This was probably intended to be an elliptical way of saying that such anxiety, if present, supported Miss Tan's story that the sexual relations had taken place but did not support the appellant's story that he knew nothing of her and that she was a complete stranger to him.

The Chief Justice then went on to say that he guided himself by the well-known passage as to the elements of corroboration which appears in the judgment of Lord Reading C.J. in *Rex* v. *Baskerville*[1] an accepted authority on this point. He proceeded to sum up his view as follows :—

> " Considering the matter in the light of that passage it seems to me that evidence as to the appellant's state of mind on 12th August showing that he entertained anxiety as to whether or not Miss Tan was pregnant considered in the light of all the surrounding circumstances afforded ample independent corroboration of her story implicating him. It was not, of course, necessarily inconsistent with the appellant's innocence but it was certainly consistent with his guilt and to that extent it was available in law as corroboration."

It is the last sentence quoted above that has caused some difficulty, since it is not easy to say with confidence what, if any, contrast is intended between the adverb "not necessarily" on the one hand and the adverb "certainly" on the other. If they were intended to convey the conclusion that the matter was equally consistent with either of the accounts given, that, as their Lordships have said, would not make it corroboration. Considering the context however and the other observations of the learned Chief Justice this does not seem to have been his meaning. Their Lordships infer that what he intended to say was that, taking the evidence as a whole, the appellant's conduct was more consistent with Miss Tan's story than his own, despite the fact that, taken in isolation, it might theoretically have been accounted for by the explanation that he gave. There is no legal defect in such a way of stating the case.

For the reasons given this appeal must fail. Their Lordships will report to the Head of the Federation of Malaya that in their opinion the appeal ought to be dismissed and that the appellant ought to pay the costs of the respondent.

Appeal dismissed.

SEAH ENG JOO v. REGINA

[A. Cr. J. (Buttrose J.) May 2, 1961]

[Singapore — Magistrate's Appeal No. 36 of 1961]

Criminal Law and Procedure — Police Supervisee — Criminal Law (Temporary Provisions) Ordinance, 1955, ss.47(b) and 49A(1)(f) and (3) — Absolute prohibition — Defence of drunkenness — Mens rea — Penal Code, s.86.

The appellant, a police supervisee under section 47(b)* of the Criminal Law (Temporary Provisions) Ordinance was convicted for failure to comply with the restrictions imposed upon him under section 49A(1)(f),† to wit "he shall remain within doors" at No. 23 Jeddah Street between the hours of 7 p.m. and 5 a.m. His only defence was that he had been to a bar in the afternoon and although he intended to leave at 6 p.m. he became drunk and fell asleep. At 9.30 p.m. he was returning home with a friend when he was arrested by the police. It was contended for him that *mens rea* was a constituent part of the offence and as he was drunk, he was incapable of forming the specific intention in the absence of which he would not be guilty of the offence by virtue of the provisions of section 86 of the Penal Code.

Held: (1) in deciding whether *mens rea* is excluded as a necessary constituent of a crime it is always necessary to consider whether the offence consists in doing a prohibited act or in failing to perform a duty which only arises if a particular state of affairs exist;

(2) as there was in this case an absolute prohibition against being out of doors during a specified period, therefore *mens rea* is not a necessary constituent of the offence.

Cases referred to:—

(1) *Harding* v. *Price* [1948] 1 K.B. at p. 702.

(2) *Sherras* v. *De Rutzen* [1895] 1 Q.B. 918.

MAGISTRATE'S CRIMINAL APPEAL.

P. Suppiah for the appellant.

Lim Chor Pee (Deputy Public Prosecutor) for the respondent.

Buttrose J. (delivering oral judgment): This is an appeal from a decision of the Criminal District Court convicting the appllant, being a person subject to a Police Supervision Order under section 47(b) of the Criminal Law (Temporary Provisions) Ordinance. 1955, of the offence of failing to comply with the restrictions imposed upon him as directed by the Order of the Minister under section 49A(1)(f) of the Ordinance.

The penalty provided for the offence is imprisonment for a term not exceeding three years and not less than one year. The appellant was sentenced to eighteen months imprisonment.

The restriction imposed upon the appellant by the Order of the Minister was that he was to remain within doors at No. 23 Jeddah Street between the hours of 7 p.m. and 5 a.m. It was not in dispute that the appellant was found out of doors at 9.30 p.m. on the night in question. His defence was that he had been to a bar in the afternoon and although he intended to leave at 6 p.m. he became drunk and fell asleep. At 9.30 p.m. he was returning home with a friend when he was arrested by the Police.

It was contended on behalf of the appellant that *mens rea* was a constituent part of the offence and as the appellant was drunk, he was incapable of forming the specific intention in the absence of which he would not be guilty of the offence by virtue of the provisions of section 86 of the Penal Code.

The learned District Judge found as a fact that the appellant was neither drunk nor fell asleep at the bar. There was, in my view, evidence to justify this finding and in the circumstances I am not prepared to disturb it. That is sufficient to dispose of this appeal in favour of the respondent. There is, however, a further question to be decided. Section 49A(3) provides that a person subject to supervision under the Ordinance, as the appellant was, who contravenes or fails to comply with any order or restriction imposed upon him under the section shall be guilty of an offence. In my view the section imposes an absolute liability on the appellant. The general rule appears to be that if an Ordinance contains an absolute prohibition against the doing of some act, such as in the present instance of being out of doors between certain hours, *mens rea* is not a constituent of the offence. It is not an act which is criminal in the real sense of the term but one which in the public interest is prohibited under a penalty.

As Lord Goddard C.J. pointed out in *Harding* v. *Price*(1) in deciding whether *mens rea* is excluded as a necessary constituent of a crime it is always necessary to consider whether the offence consists in doing a prohibited act or in failing to perform a duty which only arises if a particular state of affairs exists. That case concerned an accident which occurred when a trailer attached to a lorry collided with and damaged a stationary car while passing it. Because of the noise the trailer was making the driver of the lorry was unaware of the accident and failed to stop or report it as required by the Road Traffic Act, 1930. It was held that that was a good defence on the principle that unless a man knows that the event has happened how can he carry out the duty imposed? If the duty be to report, he cannot report something of which he has no knowledge.

The authorities, of which *Sherras* v. *De Rutzen*(2) relied on by the appellant is an instance, show that even where the statute imposes what is apparently an absolute prohibition an absence of guilty knowledge may in some cases be a defence but such cases depend on the wording and purpose of the particular statute. There is,

* Section 47(b) reads as follows:

47. Whenever the Minister is satisfied with respect to any person, whether such person be at large or in custody, that such person has been associated with activities of a criminal nature, the Minister may with the consent of the Public Prosecutor —

(b) if he is satisfied that it is necessary that such person be subject to the supervision of the police for any period not exceeding three years from the date of such order.

† Section 49A(1)(f) reads as follows:

49A. (1) Any person directed to be subject to the supervision of the police under section 47 or section 49 of this Ordinance (hereinafter in this Ordinance referred to as a person subject to supervision under this Ordinance) shall be subject to the obligations imposed upon persons subject to police supervision under section 14 of the Criminal Procedure Code and shall also be subject to all or any of the following restrictions as the Minister may by order direct: —

(f) He shall remain within doors or within such area as may be defined in the order, between such hours as may be specified in the order, unless he obtains special permission to the contrary from the officer in charge of the police division in which he resides

in my view, a clear difference between prohibiting an act and imposing a duty to do something on the happening of a certain event.

It is this difference which, in my opinion, distinguishes the present case from those to which I have referred. There was here an absolute prohibition against being out of doors during a specified period and *mens rea* is not, in my judgment, a necessary constituent of the offence.

The sentence of eighteen months was undoubtedly severe but in view of the appellant's previous conviction for extortion under section 384 of the Penal Code for which he was sentenced to nine months imprisonment, I am unable to say that it was so manifestly excessive as to warrant interference by this Court.

In the result the appeal must be dismissed and the conviction and sentence are affirmed.

Appeal dismissed.

Solicitor: *M. Ismail.*

LOKE WAN THO v. CHRISTINA LOKE

[O.C.J. (Buttrose J.) May 19, 1961]

[Singapore — Divorce No. 35 of 1960]

Divorce — Alimony pendente lite — Fixing amount to maintain rank and position.

This was an application for alimony *pendente lite* to provide the respondent wife with an income suitable to her position until the suit is heard.

Held: although the usual proportion which is adopted is one-fifth or in the case of substantial incomes one-eighth, where the income is very large it is the practice not to have regard to the question of proportion so much as to fix a sum which appears to be adequate having regard to the wife's position in life and necessities.

APPLICATION.

K. A. Seth for the applicant/respondent

G. Hill for the respondent/petitioner.

Buttrose J. (delivering oral judgment): The object of this application, which is for alimony *pendente lite,* on which we have been engaged for the last 3 days is to provide the respondent wife with an income suitable to her position until the suit is heard. I have approached the matter in the first instance without having regard to the maximum amount which may be awarded under the Ordinance, namely, one-fifth of the husband's average nett income etc. or to the usual proportions adopted in such cases. I have considered the problem independently of these questions at the outset with a view to arriving at a decision as to what I conceive to be a reasonable and just amount to award the respondent by way of alimony *pendente lite.*

Having done so, I have then considered that figure in the light of the maximum amount I can award and the usual proportions adopted. I am aware that the usual proportion which is adopted, is one-fifth which is considered to be a suitable allowance or in the case of substantial incomes one-eighth. Where however the income is very large, it is, I think, the practice not to have regard to the question of proportion so much as to fix a sum which appears to be adequate having regard to the wife's position in life and necessities and not minutely to go into the figures, which in this case I do not propose to do. I must fix an amount which would be sufficient to maintain the respondent in the rank and position of life which she has hitherto occupied or putting it in another way, I must award such a sum as will supply the respondent with the necessaries, comforts and advantages incidental to her station in life. I bear in mind in this case the petitioner is a millionaire and that he and the respondent have lived their married life in keeping with that status at Mallaig, the matrimonial home where the respondent has continued to reside after the petitioner left in February 1960.

I have considered the means both of the petitioner and the respondent and also the income tax position. As a result of the figures with which I have been supplied by the industry of counsel and their advisers and which appear in the evidence as exhibits, I consider that a nett sum in the vicinity of $2,500 to $3,000 a month would be a proper award in this case by way of alimony *pendente lite.* I should like counsel to work out what is the gross amount required to return a nett figure of not less than $2,750 a month in the hands of the respondent which is to include her own income, and I will make a formal order accordingly of payment of such gross amount by the petitioner to the respondent by way of alimony pending suit. I think I have perhaps been over generous in this matter but if I have erred, I prefer to do so on the side of generosity rather than parsimony.

On the question of costs, I think, in this case the proper order to make is that the respondent must have her costs of this application and the Registrar will be given the appropriate directions in the final Order to be drawn up and agreed by counsel and submitted for my approval on Tuesday next the 23rd May. There will be liberty to apply.

Order accordingly.

Solicitors: *Rodyk & Davidson; K. A. Seth.*